IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5286 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

STATE TRANSPORT WORKERS UNION

Appearance:

MR HARDIK C RAWAL for Petitioner

NOTICE SERVED for Respondent No. 1 -- Though notice is served, none appears.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 10/02/2000

ORAL JUDGEMENT :

The respondent, though served, has chosen not to make an appearance. The matter being old, it is taken up for final hearing.

2. Gujarat State Road Transport Corporation ("the Corporation" for brevity) has filed the present Special Civil Application against the award dated 25.7.1986 passed by the Industrial Tribunal, Gujarat at Ahmedabad

("the Industrial Tribunal" for brevity) in Reference (IT) No.304 of 1983, which came to be made under sec.10(1) of the Industrial Disputes Act, 1947, whereby the Industrial Tribunal substituted the penalty imposed by the Corporation on the delinquent of putting him at the minimum of the time scale by the punishment of withholding of his increments for two years without future effect.

3. It is the case of the Corporation that the delinquent in question who was serving as Conductor, on 28.11.1981, was found to have collected fare from six passengers travelling between Dholera and Hethalpur in the bus plying between Dholera to Jaswantpura, but did not issue tickets in their favour till the destination. It was also alleged against him that he has also not issued tickets to other five passengers and has not closed the way bill. Regular departmental inquiry was initiated against him. In the said departmental inquiry the delinquent offered explanation to the effect that on the day of the incident he was not well, but the same was not accepted by the competent authority and an order of punishment reducing him to the minimum of his time scale came to be passed.

4. On perusal of the papers, it is found that the learned advocate appearing for the workman had stated in the Statement of Claim that the inquiry was not in consonance with the principles of natural justice. But, thereafter, said point was not pressed at the time of argument. Besides, the learned advocate appearing for the delinquent workman did give Purshis to the effect that he does not challenge the legality or propriety of the inquiry (exh.8). The Industrial Tribunal has discussed the rival contentions and considered the same and has thereafter come to the conclusion that the charges to the effect that the delinquent had taken money from the passengers has not at all been proved and that though the delinquent had not issued tickets to some of the passengers, it happened only on account of the delinquent having started on road booking. The Industrial Tribunal accepted the explanation put forward by the delinquent to the effect that he was asked to start on road booking. The Industrial Tribunal came to the conclusion that the punishment of reverting the delinquent to the minimum of the time scale is harsh and at the relevant time the delinquent was having 7 years service to his credit and that the punishment in question would put him into a very serious financial loss. The Industrial Tribunal imposed punishment of only withholding his increments for two years without

permanent effect.

5. In view of the fact that the learned advocate appearing for the delinquent had given up his challenge to the legality and propriety of the inquiry, the substitution of the punishment was not warranted. The Industrial Tribunal has failed in taking into consideration this important aspect that the challenge to the inquiry even on the ground of the same being not in consonance with the principles of natural justice was given up at the time of the arguments and thereafter the challenge to the legality and propriety of the inquiry was also dropped by filing a Purshis. In this view of the matter the Industrial Tribunal's substitution of the punishment is uncalled for. It is too lenient an approach which is likely to carry wrong message to the persons indulging in financial irregularity. In fact, such a person may not be desired in the organisation. But it seems that the Corporation looking to his "Default Card" has thought it fit to give him a chance to improve and not to impose a penalty of "Economic Death", which may adversely affect his entire family.

6. The learned counsel for the petitioner has invited the attention of the Court to the earlier incidents of the delinquent starting from 23.12.1978 to the present incident dated 28.11.1981. A perusal of the nature of the incidents narrated indicates that they are not in the nature of financial irregularity and hence it cannot be said that the delinquent was in the habit of committing such type of irregularities. Further looking to the time span, which has elapsed since filing of this petition in the year 1987 and in view of the fact that the learned counsel appearing for the petitioner has not placed any material on record of the case to show that the delinquent thereafter has indulged in any such irregularity, it may warrant a lenient but not too lenient an approach to the default committed by the delinquent. This Court feels that the punishment substituted by the Industrial Tribunal is too lenient. It will be proper if the punishment imposed by the Industrial Tribunal is increased to an extent so as to have some deterrent effect on a person committing such an irregularity. It will, therefore, be in fitness of things to impose a punishment of withholding his increments for 5 years without permanent effect.

7. In view of the discussion, the award of the Industrial Tribunal, Gujarat at Ahmedabad in Reference (IT) No.304 of 1983 is modified to the aforesaid extent. Rule is made absolute in the aforesaid terms with no

order as to costs.
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